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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Re: Annual Assessment of the Status of Competition, CS Docket 97-141

Dear Mr. Caton:

The Satellite Broadcasting and Communications Association (SBCA) respectfully submits the attached comments for consideration in the above-captioned proceeding. Please find enclosed an original and fifteen copies pursuant to the Commission's rules to be distributed to the appropriate parties.

Sincerely,

Andrew R. Paul
Senior Vice President

ARP/mh
Enclosures



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Before the

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OFFICE OF THE SECRETARY

Washington, D.C. 20554

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In the Matter of)	
)	
Annual Assessment of the Status of)	CS Docket No. 97-141
Competition in Markets for the)	
Delivery of Video Programming)	

NOTICE OF INQUIRY

**COMMENTS OF THE
SATELLITE BROADCASTING AND
COMMUNICATIONS ASSOCIATION OF AMERICA**

**Andrew R. Paul
Senior Vice President
Satellite Broadcasting &
Communications Association
225 Reinekers Lane
Suite 600
Alexandria, VA 22314**

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NOTICE OF INQUIRY

**COMMENTS OF THE
SATELLITE BROADCASTING AND
COMMUNICATIONS ASSOCIATION OF AMERICA**

The Satellite Broadcasting and Communications Association of America ("SBCA") is pleased to submit to the Commission its comments in the above referenced proceeding. This will be the fourth "Competition Report" which SBCA has filed with the Commission, having participated in each of the respective proceedings since their inception. As the Commission is aware, there have been great strides in the development of Direct-To-Home ("DTH") technology in the past four years, the most notable being the introduction of Direct Broadcast Satellite service ("DBS") to consumers beginning in June, 1994. In the three short years that DBS has been on the market, it has become the highest quality

subscription video service available by virtue of its digital satellite transmissions and digital audio sound at the television set. Thus it is timely and appropriate that this proceeding occurs practically on the anniversary of DBS.

I. INTRODUCTION.

The SBCA is the national trade association which represents all segments of the DTH industry (referred to jointly by the Commission in this proceeding as "DBS" and "HSD"). The Association's membership includes the manufacturers and operators of both C-Band and Ku-Band satellites and transponders; the principal satellite-delivered program services which are part of DBS program packages and which are also available to C-Band subscribers either a la carte or as part of a larger offering marketed by third party packagers; the various manufacturers of consumer receiving equipment, including set-top box, decryption units and dish antennas; the five major national DBS operators¹; and approximately 2,500 retailers who are the point of sale for consumers purchasing satellite receiving systems and often other associated consumer electronic equipment.

While this membership configuration may be considered to comprise the "traditional" sectors of the DTH industry, new and increasingly high tech, consumer oriented elements are also joining the Association or are expressing great interest in participating in the industry's growth. We believe that is an

indication that there is a significant and broad potential for increased vertical consumer appeal, particularly on the DBS side. For example, large consumer electronics retailers, as well as CE buying co-ops, have been playing a larger part in the Association's activities and trade fora in recognition of the increasing consumer orientation of DBS systems.

Recently, advanced technology communications firms, software companies, and telephone companies have also shown an interest in bringing their resources as well as new and exciting concepts to DBS distribution. The applications include Internet access via satellite at the highest existing data rates, new distribution structures to take advantage of non-traditional DTH retail arms, and potential "convergence" techniques heretofore considered only for wire technologies.

In the meantime, the high resolution digital video transmitted by DBS satellites has maintained its preeminent position in the marketplace together with the wide choice and diversity of programming to which consumers can subscribe. We will discuss the consumer impact of these features shortly in the context of the latest consumer marketing study which SBCA recently conducted to gauge the public's attitude toward DTH video technology.

¹They are Alphastar, DIRECTV, Echostar, Primestar, and U.S. Satellite Broadcasting.

II. DTH SUBSCRIBER GROWTH, PENETRATION AND COMPETITION.

The Commission has traditionally assessed the state of video market competition in the context of how well other Multichannel Video Program Distributors ("MVPD") are faring with cable in view of the latter's position as the primary local subscription service provider. However, as the Commission measures competition by that paradigm, it should also take note that DTH faces competition on another front. Because of the ubiquitous, national nature of the satellite's footprint, DTH service providers, and particularly DBS services, also compete among themselves. DBS providers take great care to differentiate themselves one from the other in order to attract new consumers, whether they migrate from cable or are first-time subscription video consumers.

By the same token, cable faces no such market scenario. There are few overbuilds because wired physical plant is costly to install and must cover enough of a service area in order to ensure that a viable customer base can be "passed." The DTH market, on the other hand, embodies different factors. While all homes under a satellite footprint are necessarily "passed," DBS service providers face immediate "effective competition" not only from the cable operators they compete with locally, but also from the other DBS platforms whose footprints universally overlap. So while cable has enjoyed about 20 years of unfettered competition until now, each of the DBS providers has faced it since they commenced service.

Nonetheless, the advance of DTH subscriber growth continues rapidly, fueled primarily by the popularity and ease of availability of DBS. The relevant subscriber data offers proof of the success of DBS in its first three years of operation even though the industry has yet to show a profit for its efforts. For the 12-month reporting period ending June 30, 1997, SBCA's research, economic and database arm, SkyTRENDS² reported 7.367 million total DTH subscribers, comprising:

<u>Service</u>	<u>#Subscribers (millions)</u>
DBS	5.172
<u>C-Band</u>	<u>2.184</u>
Total	7.356

DTH subscribership represents almost 7.4% of total U.S. television household penetration which translates to almost 11% of U.S. cable subscribership (assumed at 68 million).

Appendix A shows DTH growth rates based on end of year subscriber counts for the 12-month periods beginning July 1, 1994 (which approximates the inception of DBS service). Naturally, the growth rates for these initial years are larger in the first two reporting periods because the baseline of subscribers for DBS commences at a very low level and then increases rapidly. As the

² SkyTRENDS is the independent research arm of the DTH industry and operates as a joint venture between SBCA and Media Business Corp, a Denver-based media consulting firm. SkyTRENDS publishes SkyREPORT, a monthly economic data newsletter; conducts the twice yearly SkyFORUM symposia for the trade press and financial community; and offers the Effective Competition Tracking Reports for cable operators desiring to follow, utilizing current subscriber data, the state of competition by DTH in their service areas.

subscriber base begins to grow, the rate of increase naturally diminishes. So in order to make a more meaningful evaluation of the impact of DBS, it is actually more relevant to examine the growth of new subscribers using data showing new subscribers acquired per day. That analysis shows a sharp increase in per day subscriber penetration from one year to the next.

<u>Year</u>	<u>New Subscribers</u>	<u>Growth per Day</u>
7/1/94	N/A	N/A
7/1/95	1,080,000	2,959
7/1/96	1,800,000	4,932
7/1/97	2,222,000	6,088

The growth rates shown by the data in Appendix A show graphically how DBS has penetrated the video market for the years reported and is a more accurate depiction of the popularity and acceptance of the technology by consumers.

At the same time, the data shows a slight decline in overall subscribership to C-Band services as consumers switch to DBS. However, a meaningful C-Band market continues to flourish despite its lack of net growth as video enthusiasts stand by the diversity and programming offered by the approximately ten C-Band program packagers who remain active in the market. These packagers remain an important component in C-Band program delivery because of the infrastructure of the C-Band service. Comprising a confederation of satellites, that market relies on the ability of third parties to assemble

programming from the individual program services and make them available in packages as a "one-stop shop" to subscribers.³ In any event, SBCA has explained thoroughly the C-Band marketing process in previous Competition Report proceedings.

Appendix B shows DTH penetration on a state-by-state basis as of July 1, 1997. It is clear that, particularly in areas which comprise a more rural environment, DTH has made significant inroads with regard to share of TV households. For example, 24 states now have 10% or more penetration of TVHH's; 5 states are at 15% or more; and 2 states are above 20% (Montana and Vermont). Penetration favors the West, Mid-West and South. The Northeast, however, shows the least DTH penetration (with the exception of Maine and Vermont) primarily because of heavy urban concentration. It is possible that this phenomenon can be mitigated by the Commission's new rules on the pre-emption of zoning and covenants, and this matter will be discussed further below.

III. CHARACTERISTICS OF DTH CONSUMERS.

The SBCA annually conducts a consumer survey of DTH system owners in order to determine the profile and demographics of households which have selected satellite technology as their preferred means of watching television

³ DBS programming, on the other hand, is contracted for and assembled by the provider who also controls the satellite or the transponders. The provider then markets the service directly to consumers.

programming. The March, 1997, survey includes data uncovered in interviews with 1,034 sample households with either a C-Band or DBS antenna.⁴

The results reveal not only consumer demographics but identify as well the factors surrounding a household's decision to acquire a home satellite system.

Of particular relevance to the Commission in this proceeding are the responses of interviewees regarding MVPD selection and especially the availability of cable television. For example, under the category of "How Television Received Previous to DTH" (see Appendix C), 28% of all respondents received television programming through cable prior to owning a DTH system. However 43% of respondents owning a DTH system for one year or less previously subscribed to cable, which we attribute to the increasing penetration of DBS. In addition, 46% of respondents classified as "Suburban" by location previously took cable.

Respondents were also asked whether or not cable was available to their households (see Appendix D). Of the total interviewed, 35% stated that cable was available at the time they purchased their DTH system, and 44% stated that their homes were passed by cable at the time of the interview. However 71% of "Suburban" DTH owners reported that cable was available, with 61% stating that

⁴ Home Satellite Dish Owner Study, prepared for the SBCA by Bruskin Goldring Research, March 1997.

they were passed at the time they acquired satellite. Approximately 10% of consumers reported that they currently subscribe to cable.

The Bruskin Goldring survey supports, through user interviews, what the SkyTRENDS data bear out: that DBS is becoming increasingly the system of choice for consumers who want the programming and diversity at the competitive value that the service providers offer. Nevertheless, while the industry has made substantial gains in terms of growth of subscribers, there is still a long way to go before DBS' full competitive impact can be felt. By sheer numbers alone DBS subscribers represent only 7.4% of TVHH's, compared to 90% of homes passed by cable. While that may be significant in terms of short term growth, the Commission should recall that today's modern cable systems have taken years to develop their technology and market position. DTH services are also confronted with regulatory obstacles and other hurdles which hinder freer market development. We discuss these in the following section.

IV. REGULATORY AND MARKETPLACE OBSTACLES TO DTH GROWTH.

In spite of the DTH success story to date, future marketplace growth and the ease of further consumer access to DTH systems will depend heavily on the industry's ability to see its way through certain regulatory and statutory complications which inadvertently have created roadblocks to optimal market penetration. We believe that the technology has proven itself to consumers, and that their acceptance of DBS as the designated competitor to cable has been

borne out by the subscriber data presented earlier. But certain aspects of the DTH regulatory environment must be "fine tuned" to allow the industry to pursue its goals of increasing subscribership and satisfying consumers.

A. Zoning and Covenant Restrictions: In accordance with the provisions of Section 207 of the 1996 Telecommunications Act, the Commission issued its report and order on August 6, 1996, preempting local governmental and private restrictions on DBS dishes one meter or less in diameter. The DTH industry commends the Commission for its rapid implementation of an important rulemaking which has major portent for the ability of DBS providers to attract new consumers to their services. It was a major step forward toward removing artificial market barriers which had been erected by local zoning authorities and home owners associations and had prevented consumers from acquiring DBS systems. Previously, many courts had misinterpreted the FCC's 1986 preemption order which prohibited discrimination against DTH antennas (compared to other types of receiving antennas). Moreover, the 1986 order did not apply at all to DTH restrictions applied by HOAs. The Commission's 1996 order reinforced Congressional intent to remove any local restrictions which "impair a viewer's ability" to receive video programming through over-the-air reception devices.

The Commission is presently considering a number of petitions for declaratory ruling under the 1996 order. An important one filed by the SBCA and Star Lambert, a local satellite retailer, asks for preemption of the zoning ordinance of the town of Meade, KS. The ordinance was selected for challenge because of its egregious violation of the Commission's rules, particularly with respect to DBS antennas of one meter. To date, the Commission has yet to issue a ruling on this petition or any other petition seeking a ruling on satellite antennas one meter or less in diameter. Included are other important petitions dealing with HOAs, many of which are misinterpreting the preemption order - unwittingly or not. Unfortunately, the ability of home-owning consumers to acquire DBS systems is still being thwarted.

While we understand the Commission's need to ensure that its decisions will meet prospective legal challenges, it is also vital that far-ranging precedents covering both zoning ordinances and HOA restrictions be established in a timely fashion. Other restrictions in violation of the order continue on without remedy. Thus, we await creation by the Commission of "ground rules" which can apply to the majority of zoning ordinances and covenant restrictions nationwide. This would give local parties a clear understanding of the FCC's interpretation of the new rules and allow the industry to serve consumers where previously non-compliant restrictions are modified in accordance with the FCC's rules.

Still unresolved, too, is the disposition of the Further Notice of Proposed Rulemaking dealing with multiple dwelling units, as well as renters. Section 207 appears clear on its face. There are no qualifications with regard to prohibiting the impairment of a viewer's ability to receive video programming using an over-the-air receiving device. The application of the rule to MDU residents and renters may be more complex than to single-family home owners. But in view of the statutory language, Congress' intent seems plain. If, for the moment, the Commission has not sorted out the pertinent aspects of the rule involving the entry of DBS in a MDU setting or its application to tenants, then we would urge that more time be taken to examine the issues which are at stake. For the time being, no rule is better than one which is not well crafted and does not serve consumers in the way that Congress intended.

In addition, still pending is the SBCA's petition for reconsideration regarding the Commission's decision not to exercise exclusive jurisdiction. The concept of exclusive jurisdiction in this area is an important one, and its lack can create an arduous task for consumers who may be challenged or cited by a local governmental authority or HOA. Consumers wanting to challenge a local restriction at the FCC could be faced with parallel and wholly duplicative action if the local entity brings an action - valid or otherwise - in a court of law. The SBCA's petition for reconsideration is still pending at the Commission, and we urge that it be resolved quickly and favorably.

B. DBS Public Service Obligations: SBCA has commented extensively in the Commission's proceedings on DBS public service requirements, which were mandated by the 1992 Cable Act. It will be the first time that the Commission will have to design rules for a national subscription service which does not have a local presence, as does cable and the broadcasters. Because the programming which will be utilized to satisfy the obligation must be attractive to national subscription audiences, DBS providers are asking for flexibility in designing their public service program packages. These could comprise both public service programming which is either available now or will be in the future, as well as programming originated by the DBS providers themselves. This creative latitude will enable these satellite services to compete with cable operators in addition to carrying unique programming of their own to help differentiate themselves from other DBS competitors.

SBCA also proposed the creation of a 501(c)(3) entity composed of DBS providers and public service and educational representatives which would establish suitable criteria for determining what constitutes a "non-commercial programmer of an informational or educational nature." Programmers meeting the criteria would make up a pool of services from which the DBS providers could draw. It is vital, in this regard, that DBS operators have the right to select

those public service programmers which each believes will best fit its respective subscriber audiences and which will complement in a meaningful way existing program packages.

By the same token, public service program selection by DBS providers does not constitute the "editorial control" which the Commission discusses in its proceeding and which some parties have argued should extend beyond its traditional and commonly-accepted meaning. "Editorial control" should refer only to control over the content within public service programming being carried on a DBS system and nothing else.

The Commission has a complex task in promulgating appropriate rules in this proceeding. It will be setting for a long time to come the public service environment in which DBS will operate and establishing a quality and mix of programming which must appeal to audiences who have chosen a national, private subscription service as their preferred video distribution technology. The SBCA will continue to dedicate significant time and resources to assist the Commission in arriving at a programming balance which can fulfill both the goal of public service and the continued development of DBS.

C. Equipment Compatibility and Interoperability. SBCA participated most recently in the Commission's proceeding on navigation devices which was mandated by Section 629 of the 1996 Telecommunications Act. We believe that

the DTH service should be exempt from the proposed rules because the industry is already "fully competitive" on a national basis by virtue of competition with both cable operators and other DTH providers, as well as by the ease of availability of DTH receiving equipment. We articulated, however, even graver concerns over the concepts of interoperability and the possibility of accompanying standards because of the serious ramifications of these approaches on signal security.

We will not attempt to reiterate here the history of the overwhelming satellite signal piracy of the late 1980's and early 1990's which the DTH industry underwent and then narrowly but successfully overcame in its brief, ten-year history. Had it not been for the ability of General Instrument - at that time the sole decryption provider for the industry - to change out its decoder units in the field, today's DTH success story may have been put off for many years.

As the Commission well knows, the life blood of any video distribution service is maintaining the integrity of its subscriber base. Signal piracy is the primary threat to that base, and video providers must be able to eliminate it in the marketplace swiftly and effectively. The industry's earlier experience with piracy, as devastating as it was, created a heightened awareness among all DTH providers of piracy's destructiveness.

Section 629 clearly foresaw the security perils inherent in making video set-top boxes commercially available as interoperable equipment, attached to proprietary, subscription video distribution systems. It is vital that the Commission make signal security its main priority as it contemplates its next actions in the navigation devices proceeding. SBCA urges that the Commission move cautiously in this area and pay cognizance to the need of any video provider to guard the security of its system's signals.

D. State and Local Matters. In addition to the mandate of Section 207 of the Act concerning local restrictions on DBS antennas, Congress also expressed its recognition of the national character of DTH services by granting the industry an exemption from local (but not state) taxation. The rationale behind the exemption lay in the fact that DTH does not utilize public rights-of-way or easements, or fall under the jurisdiction of franchising authorities as do cable systems. Furthermore, because DTH is not local in the same sense as a cable operator or TV broadcast station, for each service provider to track subscribers and tax them on the basis of the tax laws of thousands of cities, towns, counties, boroughs and districts all over the country would constitute an impossible administrative burden.

Nonetheless, state and local issues are increasingly finding their way to the industry's doorstep, prompted by the perceived success of DBS by state and local governments. With Federal grants steadily diminishing, states and cities

are seeking new sources of revenue. Many have directed their attention to the taxation of telecommunications services in view of the rapid growth of the technologies and services which are proliferating in this area. However, a number of state taxation proposals we have seen attempt to equate a tax on DTH to the franchise fees paid by cable while excluding the latter from the proposal (again, even though DTH utilizes no public facilities as does cable). Other tax schemes are being proposed by RBOCs which are searching for regulatory relief by urging across-the-board tax regimes on all telecommunications services. Either by accident or by design, the taxes on DTH satellite services included in these regimes are often discriminatory and may be in violation of general laws of taxation. SBCA has already participated in the legislative process in several states contemplating discriminatory taxes against DTH. We believe the trend will intensify, but it will require extreme vigilance and the commitment of substantial resources in order to ensure taxation on an equitable and nondiscriminatory basis.

Furthermore, as DBS makes greater strides, SBCA has noted an upswing on the implementation of new regulations by local governments requiring the licensing of satellite "technicians" and "installers." Ironically, satellite retailers have been installing and servicing C-Band systems for almost 15 years without technical regulation because even though these systems are more complex to install than DBS, they still don't warrant the type of regulation applicable to, say, a master electrician. We estimate that the sudden appearance of local licensing

requirements is attributable to the increased visibility of DBS and the vested interest of many localities in preserving cable franchises over which they have oversight and from which they receive fees. We are monitoring this situation also as closely as resources allow. However with the large number of consumers who install their own DBS systems, coupled with the fact that this activity is no more difficult than putting up a rooftop television aerial, we are hard pressed to see the benefit of subjecting local retailers, CE dealers, or rural telecommunications co-ops to unnecessary regulation.

E. Inequities in Copyright Law. While copyright law does not directly fall within the jurisdiction of the Commission, the evolution of the compulsory licensing process for satellite carriers as called for in the Satellite Home Viewer Act has created a situation rife with tenuousness, unfairness and misinterpretation. As a result, the inequities which the SHVA has unwittingly created in the marketplace have turned the satellite compulsory license into a competitive matter. Four distinct issues have emerged as the license created by the SHVA enters its tenth year of existence.

1. Duration of the License: The DTH copyright license embodied in Section 119 (SHVA of 1988) of the Copyright Act -- which permits satellite carriers to retransmit superstation and network signals (the latter to so-called "unserved households" only) to DTH consumers -- is not permanent. It currently operates having been renewed statutorily by the

SHVA of 1994 and is set to expire on December 31, 1999. The cable license, on the other hand, established in Section 111 of the copyright Act, is permanent. It has no fixed expiration and has been in operation since 1976 when it was created. The transitory nature of the satellite license creates enormous business uncertainty in the industry and abets a competitive imbalance between the two technologies. The subsequent need by the DTH industry to reapply to the Congress periodically for renewal of the license leaves the industry open to demands and conditions by copyright owners to which the cable industry is not subject. For the sake of equitable competition between cable and satellite, the Section 119 license should be made permanent.

2. The 90-Day Rule is Anti-Competitive: The SHVA currently requires that any DTH subscriber to distant network signals cannot have subscribed to cable in the 90 days prior to subscribing to the distant network service (see statutory reference in paragraph 4 below). The provision is anticompetitive because it inadvertently influences consumers to retain one video service over another, and it discourages consumers from subscribing to both satellite and cable if they so wish. In fact, it could be construed as an "industrial policy" which Congress never contemplated. The simplest solution is to repeal the provision in its entirety.

3. DTH Copyright Fees Do Not Equate With Cable. Further unfairness

exists in the levels of copyright fees which satellite carriers pay to retransmit broadcast programming. Cable fees are set in the statute and are supposedly adjusted for inflation every five years. On a per subscriber basis, they approximate 9.7¢ per month for superstation signals and 2.45¢ for network signals. In contrast, satellite fees are determined by negotiation between the carriers and the owners of the copyrights in the broadcast programming being retransmitted. Should the negotiations fail (as they have on each occasion), the fees are subsequently set by a Copyright Arbitration Rate Panel ("CARP"), an expensive administrative process which, when all is said and done, only leaves the opposing sides all the more poorer. The current DTH copyright rates which were set by arbitration in 1992 are now 14¢ and 17.5¢ for superstations, depending on whether or not they are subject to syndicated exclusivity, and 6¢ for distant network signals. Thus, satellite carriers pay approximately 40-60% more for the very same superstation programming carried by cable, and 100% more for network signals. The process to determine satellite fees must be changed in order to more closely equate them to cable. New fees for DTH are being determined before a CARP. If they are raised again, it will only further the wide disparity which already exists between the video competitors.

4. The "White Area" Impasse Must Be Resolved. Nothing has

plagued the DTH industry more recently than the vast uncertainty created by the "white area" provisions of the SHVA. The provision allows satellite reception of distant network signals only by an "unserved household," defined in the statute as a household that,

"(A) cannot receive, through the use of a conventional outdoor rooftop receiving antenna, an over-the-air signal of Grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network.

(B) has not, within the 90 days before the date on which that household subscribes, either initially or on renewal, to receive secondary transmissions by a satellite carriers of a network station affiliated with that network, subscribed to a cable system that provides the signal of a primary network station affiliated with that network."⁵

The eligibility standard in the Act (Grade B signal intensity) is a predictive measure but does not guarantee that a household within a Grade B contour will receive an acceptable signal.⁶ Therefore, according to the definition, some households within a Grade B contour will be eligible for network service.

Under the 1994 SHVA extension, however, broadcasters were granted the right to challenge the eligibility of satellite subscribers within their service

⁵ Satellite Home Viewer Act of 1988, P. L. 100-667, Section 119(d)(10).

⁶ Grade B intensity is defined as 50% of the households within the contour receiving an adequate picture 50% of the time. This is hardly a definition which lends itself to an easy consumer determination for the purpose of eligibility to receive distant network signals.

areas. Subsequently, more than 1 million households have been challenged, and a significant number have had their network service discontinued as a result, often after having received network service by satellite for many months. The situation has been further exacerbated by lawsuits filed by the networks and their affiliates in three cities against a major satellite carrier alleging violations of the SHVA "white area" rule. As part of the legal action, the networks and their affiliates have also filed a petition for an injunction against the carrier which, if granted, would prohibit prospective network subscription sales to satellite households within Grade B contours as defined by specific signal propagation maps.

The unfortunate aspect of this controversy is the cavalier treatment which the broadcasters have shown to consumers. By the same token, the satellite carriers who serve those consumers are frustrated because there seems to be no light at the end of the tunnel. The legal actions mounted by the networks are counterproductive and simply exacerbate an already bad situation rather than attempt to improve it. The latest move has been filing of an anti-trust action against the broadcasters by the largest satellite provider of network programming, alleging anti-competitive and overreaching actions by the broadcasters in attempting to stifle the DTH industry's growth.

Several new approaches have been proposed during the course of this battle. They include:

a) "bright line" test whereby, using topographical and transmission characteristics, a decisive line is mapped within each market to demarcate satellite-eligible zones;

b) picture quality test whereby agreed upon third parties measure the acceptability and quality of off-air reception at the TV set; and

c) compensation mechanism which allows network subscriptions within a 35-mile zone (to conform with the zone used in application of the syndex and non-duplication rules), and entails the payment of a surcharge by a subscriber residing within the zone which then conveys to the local affiliates.

Concurrently, the Copyright Office is making an exhaustive review of compulsory licensing for both cable and satellite, at the request of Senate Judiciary Committee Chairman Orrin Hatch. The report is due on August 1, 1997, and the industry and interested agencies will get the first look at what will hopefully be the beginning of copyright reform for the satellite carriers. The DTH industry, in any event, appreciates the interest of the Commission in such matters because, as we originally stated, the satellite compulsory license has gone beyond the realm of copyright alone and now also has important ramifications for competition in the marketplace.